IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4945 of 2003

Date of decision : 22.11.2007

Gurdial Chand Sharma

… Appellant

Versus

Satish Mahendru and others

…Respondents

Present : Mr.Suvir Sehgal, Advocate for the appellant.
Mr.B.R.Mahajan, Advocate for the respondents.

Vinod K.Sharma, J. (Oral)

This Regular Second Appeal has been filed against the judgments and decrees of the learned Courts below dismissing the suit for recovery filed by the plaintiff-appellant for refund of earnest money deposited towards part payment of sale consideration.

The plaintiff-appellant brought a suit on the plea that an agreement was executed between the parties on 12.10.1993 wherein the defendant-respondents agreed to sell a plot measuring 175.71 sq.yards, the sale consideration was fixed at Rs.1590/- per sq.yard and by way of earnest money, a sum of Rs.30,000/- was paid. The case set up by the plaintiff-appellant was that the date fixed for execution of sale deed was 12.2.1994 which was subsequently extended to 25.2.1994. The defendant-respondents contested the suit on the plea that the plaintiff –appellant has failed to perform his part of contract and therefore, was not entitled to the refund of earnest money.

Learned courts below, on appreciation of evidence, have recorded a concurrent finding of fact that the plaintiff-appellant has failed to

prove on record his willingness to perform his part of contract and thus, the suit filed by the plaintiff-appellant was ordered to be dismissed.

Learned counsel appearing on behalf of the appellant has challenged the judgments and decrees passed by the learned courts below on the ground that the mutation of the land agreed to be sold was not sanctioned in favour of the defendant-respondents. The contention of learned counsel for the appellant was that sanction of mutation in favour of defendant-respondent was pre-requisite to execute the sale deed.

The second contention of learned counsel for the appellant was that because of the size of the plot, no permission for raising construction could be granted by the municipal committee and therefore, the contract was un-executable which entitled the appellant-plaintiff to claim the refund of earnest money alongwith interest.

On consideration of the matter, I find no force in the contentions raised by learned counsel for the appellant. It has been pointed out by the learned counsel appearing on behalf of the respondents that mutation in favour of defendant-respondents stood sanctioned prior to the date fixed for execution of sale deed. Be that it may, it is settled law that mutation does not confer any title. Once the defendants hase a title which was marketable and they were willing to execute the sale deed, the same could not be avoided by the plaintiff-appellant on the plea that the mutation is yet to be sanctioned in favour of the defendant-respondents.

The second point raised by the learned counsel appearing on behalf of the appellant is also without any merit. Merely because the municipal committee is not likely to sanction the site plan or give permission for raising the construction cannot be ground to avoid the contract of sale when the title of the defendant-respondent was not in dispute.

Once it is proved on record that there was breach of contract on the part of the plaintiff-appellant, the learned courts below were right in coming to the conclusion that the plaintiff was not entitled to refund of the earnest money.

No question of law muchless substantial question of law arises for consideration in this appeal.

Dismissed.

[**Vinod K.Sharma**]
Judge

22.11.2007

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